S.B. CIVIL WRIT PETITION NO.3046/2004

Smt. Krishna Devi & anr. vs. State of Raj. & ors.

Date : 28.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. J.L. Purohit, for the petitioners.

Mr. L.R. Upadhyay, Dy.GA., for the respondents.

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Heard learned counsel for the parties.

Brief facts of the case are that a piece of land was allotted to Nenu Ram before the year 1973 on temporary cultivation lease basis. Said Nenu Ram applied for permanent allotment of land by submitting application on 10.7.1973. Nenu Ram's application was dismissed vide order dated 20.12.1975 on the ground that said Nenu Ram was not a landless person, therefore, no permanent allotment can be made in this regard. Against the order dated 20.12.1975, Nenu Ram preferred an appeal which was dismissed by the Revenue Appellate Authority on 20.12.1976. Nenu Ram's revision petition was dismissed by the Board of Revenue on 23.8.1978. Hence, Nenu Ram preferred a writ petition before this Court being S.B. Civil Writ Petition No.702/1978. The said writ petition as allowed by the order of this Court dated 10.7.1985 on the ground that no opportunity of hearing was given to the petitioner to lead evidence and thereby principle of natural justice has been violated. After setting aside all the

orders passed against the petitioner, the matter was remanded to the lower authority to consider the claim of Nenu Ram for permanent allotment. After the order of this Court dated 10.7.1985, the matter was again considered but Nenu Ram's application was dismissed by S.D.O., Raisinghnagar vide order dated 6.4.1993.

According to the petitioners, during pendency of Nenu Ram's application for permanent allotment, Nenu Ram died in the year 1991. The allotting authority did not gave any notice to the legal representatives of Nenu Ram and dismissed the application of Nenu Ram. When the wife of Nenu Ram and Liladhar (son of Nenu Ram) came to know about the order dated 6.4.1993, they preferred an appeal before the Revenue Appellate Authority but the same was dismissed vide order dated 2.3.2002. Thereafter, the petitioners preferred revision petition before the Board of Revenue which was also dismissed vide order dated 26.3.2004. Being aggrieved against the above orders, the petitioners has filed this writ petition.

According to learned counsel for the petitioners, land was allotted to Nenu Ram on temporary cultivation basis after finding him eligible for allotment of agriculture land. Nenu Ram's application for permanent allotment was dismissed solely on the ground that he was in government service at the relevant time, therefore, he was not eligible person for allotment of

land.

According to learned counsel for the petitioners, the allotment of land to Government servant prior to amendment of the Rule by notification dated 11.1.1983 was valid because after 11.1.1983 only, it has been provided in the Rule that any employee of the Government shall not be eligible for allotment of land. Learned counsel for the petitioners in this regard relied on the judgment delivered in case of Gopi Ram vs. State and others reported in 1998(1) W.L.C. (Raj.) 363 and the judgment delivered by the Hon'ble Supreme Court in Brij Lal vs. Board of Revenue reported in A.I.R. 1994 SC page 1128. It is also submitted that in view of the above judgments, the application for permanent allotment cannot be denied on the ground that the original allotment itself was bad.

According to learned counsel for the petitioner, in this case, Nenu Ram had not suppressed any fact from the authorities nor there is an allegation that he obtained temporary cultivation lease by suppressing any fact or by playing any fraud, therefore, the rejection of permanent allotment of land in dispute to Nenu Ram is absolutely illegal.

It is also submitted that Nenu Ram died long ago before the matter was decided by the allotting authority after the order of this Court dated

10.7.1985, therefore, the order of rejection of Nenu Ram's application for permanent allotment is an order against dead person, hence nullity.

Learned counsel for the respondent State submits that Nenu Ram was in Government service, therefore, he could not have been treated as landless person and he could not have been allotted land for temporary cultivation. It is also submitted that the Rule was amended and, therefore, now the order of permanent allotment cannot be passed in favour of Nenu Ram or his successor.

I have considered the rival submissions.

It is clear from the record that the land was allotted to Nenu Ram prior to the year 1973. He and thereafter his successors are in cultivatory possession and more than 30 years have passed. Nenu Ram, though was in service when he applied for permanent allotment of land on the basis of the claim which accrued to him because of allotment of land to him on temporary cultivation basis. Therefore, at the time when the land was allotted to Nenu Ram for temporary cultivation basis, he was found to be a person eligible for allotment of land. He did not incur any disqualification thereafter for permanent allotment of land. The only ground against Nenu Ram was that he was in service but that was not the

disqualification at the relevant time and the respondents cannot take the plea that since the Rules were amended after about 10 years from the date of application of Nenu Ram for permanent allotment, therefore, the authorities were right in rejecting Nenu Ram's application for permanent allotment of land. In the year 1973, when the case of permanent allotment of land to Nenu Ram was considered, the authorities could not have anticipated that the Rule will be amended and Nenu Ram will be disqualified.

In the totality of the facts, it would be absolutely unjust to remand the matter back to the allotting authority for passing a fresh order of allotment after 30 years.

In view of the above, this writ petition is allowed, the impugned orders dated 6.4.1993, 2.3.2002 and 26.3.2004 are set aside, the petitioner's application for allotment of the land in question on permanent allotment basis is allowed, however, subject to payment of all dues for which Nenu Ram could have been held liable on 20.12.1975 when Nenu Ram's application for allotment of land on permanent basis was rejected.

(PRAKASH TATIA), J.

S.Phophaliya